

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SEAN H. BENNETT,

Plaintiff,

v.

KALAMAZOO COUNTY
MENTAL HEALTH, *et al.*,

Defendants.

Case No. 5:04-CV-60

Hon. Richard Alan Enslen

ORDER

Defendants Kalamazoo County Mental Health, Robert Butkiewicz, Carol Riddle-Wallus, Joe Neal and Jan Duplissie, through counsel, have moved for dismissal under Federal Rule of Civil Procedure 12(b)(6) and summary judgment under Rule 56. The Motion should be treated as one brought under Rule 56 because it raises matters outside the pleadings. *See* Fed. R. Civ. P. 12(b). Oral argument is unnecessary in light of the briefing.

The supporting exhibits filed with the Motion do not properly support a grant of summary judgment. The exhibits consist almost entirely of police reports, uncertified documents, and other hearsay documents which do not comply with Rule 56(e). *See Moore v. Holbrook*, 2 F.3d 697, 699 (6th Cir. 1993); *Hartsel v. Keys*, 87 F.3d 795, 799 (6th Cir. 1996); *Wiley v. United States*, 20 F.3d 222, 225-26 (6th Cir. 1994). Due to this defect, the Motion will be denied without prejudice.

THEREFORE, IT IS HEREBY ORDERED that Defendants Kalamazoo County Mental Health, Robert Butkiewicz, Carol Riddle-Wallus, Joe Neal and Jan Duplissie's Motion for Dismissal and Summary Judgment (Dkt. No. 86) is **DENIED** without prejudice to later motion.

DATED in Kalamazoo, MI:
May 16, 2005

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
UNITED STATES DISTRICT JUDGE